

This is a claim for a series of accidents and repetitive mini-traumas occurring from November 1996 through January 17, 1997, which allegedly caused injury to both arms, shoulders, and neck. Although claimant did not experience symptoms in the left shoulder until after he was laid off, the Judge found that claimant had a left shoulder impairment that was a natural and probable consequence of the repetitive use injury that claimant sustained while working for the respondent. The Judge awarded claimant a 19 percent permanent partial general disability.

The respondent and its insurance carrier contend the Judge erred. They contend that claimant failed to prove that he sustained any permanent injury to his left shoulder. Alternatively, they argue claimant failed to prove that his left shoulder injury was caused by or related to the work that claimant did for the respondent.

The only issue before the Board on this appeal is what is the nature and extent of claimant's injury and disability as a result of the work that he did for the respondent.

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. Steven R. Bratcher worked for Allen Trenching for approximately three years as a working foreman. The job included trenching ditches; loading and unloading equipment; repetitive pushing, pulling, and twisting; and using a sledgehammer and digging.
2. In November 1996, Mr. Bratcher began experiencing pain in his right arm, right shoulder, and neck that would not resolve. Despite gradually worsening symptoms, Mr. Bratcher continued to work until he was laid off on January 17, 1997.
3. Shortly after the layoff, Mr. Bratcher sought treatment from his personal physician, Dr. Patrick L. Murphy. Dr. Murphy immediately referred Mr. Bratcher to Dr. James L. Gluck who began treatment and saw Mr. Bratcher four times between January 29, 1997 and July 2, 1997.
4. In April 1997, Mr. Bratcher began experiencing pain in his left shoulder. At that time, Mr. Bratcher was unemployed and had not worked since being laid off. The first notation of left shoulder complaints appears in Dr. Gluck's medical notes dated April 2, 1997.
5. In late May 1997, Mr. Bratcher began working for a moving company doing clerical and other light work. After doing that job approximately three or four weeks, he quit and then began working for another company, B & B Trenching Company. According to Mr. Bratcher's testimony, he did not violate his work restrictions in either the light work that he did for the moving company or the work that he did with B & B Trenching Company.
6. Dr. Gluck, a board-certified orthopedic surgeon, testified that in January 1997 he diagnosed a two-year history of right elbow lateral epicondylitis and a three-month history of right shoulder pain, possibly due to mild impingement, with overuse tendinitis of the rotator cuff. When he released Mr. Bratcher in July 1997, the doctor noted that Mr. Bratcher's symptoms had decreased. At that point, Dr. Gluck's impression was improved right shoulder pain likely caused by mild impingement, mild left shoulder pain caused by possible mild impingement, and chronic right elbow lateral epicondylitis. The doctor released Mr. Bratcher with permanent restrictions of limited repetitive overhead work and lifting according to his pain tolerance and endurance.
7. Dr. Gluck saw Mr. Bratcher for the last time in February 1998. According to Dr. Gluck, Mr. Bratcher's clinical signs had increased as there were now signs of subacromial popping in both shoulders, irritation in the ulnar nerve at both elbows, and bilateral carpal tunnel syndrome. Dr. Gluck believes that the right shoulder and right elbow pain are related to Mr. Bratcher's work at Allen Trenching but the other problems are related to the work at B & B Trenching Company.

Dr. Gluck believes that Mr. Bratcher has a 2 percent functional impairment to the right upper extremity as a result of the overuse injury that he sustained while working for Allen Trenching and an additional 1 percent due to the activities that he did after the January 1997 layoff.

8. Dr. Pedro A. Murati examined and evaluated Mr. Bratcher at his attorney's request in December 1997. Later, the Judge authorized Dr. Murati to treat Mr. Bratcher. Dr. Murati diagnosed right carpal tunnel syndrome, left ulnar cubital syndrome, bilateral rotator cuff strains with the right being greater than the left, probable right posterior interosseus nerve entrapment, and cervical strain, all of which combine for a 27 percent whole body functional impairment according to the 4th edition of the *AMA Guides to the Evaluation of Permanent Impairment*. The doctor believes that Mr. Bratcher overused his left shoulder protecting the right.

9. At the request of Allen Trenching and its insurance carrier, Dr. Philip R. Mills, who is board certified in physical medicine and rehabilitation, examined and evaluated Mr. Bratcher in October 1998. He diagnosed bilateral mild shoulder impingement syndrome, mild right carpal tunnel syndrome, and bilateral ulnar nerve neuropathy. Dr. Mills believes the right shoulder injury is related to Mr. Bratcher's work activities at Allen Trenching but he could not say within a reasonable degree of medical probability whether Mr. Bratcher's other problems were related to that work. Using the 4th edition of the *AMA Guides*, the doctor rated Mr. Bratcher with an 11 percent whole body functional impairment, which included a 2 percent functional impairment to the right shoulder for loss of range of motion.

CONCLUSIONS OF LAW

1. The Award should be affirmed.

2. Allen Trenching and its insurance carrier argue that Mr. Bratcher could not have injured his left shoulder working for Allen because his left shoulder symptoms began after he was laid off. The Appeals Board disagrees.

3. The Kansas Supreme Court has long recognized that a worker may sustain simultaneous injury to both upper extremities from repetitive trauma or overuse although the symptoms may begin at different times.¹

4. Further, the Kansas Supreme Court has long recognized that every natural and direct consequence that flows from a compensable injury is also compensable.²

5. The Judge averaged Dr. Murati's 27 percent whole body functional impairment rating with Dr. Mills' 11 percent rating and found that Mr. Bratcher had a 19 percent permanent partial general disability. The Appeals Board affirms that holding. It is clear that Mr. Bratcher injured his right shoulder working for Allen Trenching Company. It is more probably true than not that

¹ Depew v. NCR Engineering & Manufacturing, 263 Kan. 15, 26, 27; 947 P.2d 1 (1997); Murphy v. IBP, Inc., 240 Kan. 141, 144, 145; 727 P.2d 468 (1986).

² Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

Mr. Bratcher also simultaneously sustained repetitive mini-traumas to his left shoulder when he was sustaining the repetitive traumas to the right shoulder. Also, it is more probably true than not that Mr. Bratcher began favoring the right shoulder after those symptoms began, thus causing additional stress and overuse of the left shoulder. Therefore, the Board also finds that the left shoulder impairment is also a natural and direct consequence of the right shoulder injury. When considering the entire record, the Board concludes that the left shoulder injury and impairment is directly related to Mr. Bratcher's work activities while employed by Allen Trenching. The Appeals Board affirms the Judge's finding that Mr. Bratcher has a 19 percent whole body functional impairment upon which his permanent partial general disability benefits should be based.

6. The Board adopts the Judge's findings and conclusions to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Appeals Board affirms the February 19, 1999 Award entered by Judge Jon L. Frobish.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David H. Farris, Wichita, KS
Douglas D. Johnson, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director